

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and Their Impact on the Gas Price Spikes Experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

Order Instituting Investigation Whether San Diego Gas & Electric Company, Southern California Gas Company and Their Holding Company, Sempra Energy, Respondents, Have Complied With Relevant Statutes and Commission Decisions, Pertaining to Respondents' Holding Company Systems and Affiliate Activities.

Investigation 03-02-033
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING TESTIMONY REQUIREMENTS**

I. Summary

Consistent with the March 21, 2006 scoping memo, the scope of testimony and evidentiary hearings to be held on a consolidated basis in Investigation (I.) 02-11-040 and I.03-02-033 is established, taking into account the outcome of a meet-and-confer process. A scheduling conference call will be held on May 5, 2006 to address, among other matters, whether additional issues should be considered based on the 2005 audit report of Alliance Consulting Group (Alliance), which is to be filed in I.03-02-033 on May 1, 2006.

II. Results of the Meet-and-Confer Process

The March 21, 2006 scoping memo identified 12 issues to be considered at this time, based on concerns raised in audit reports submitted by GDS Associates Inc. (GDS) and NorthStar Consulting Group (NorthStar) and/or the SCE testimony submitted in Phase I.B of I.02-11-040, and established dates for submittal of testimony and evidentiary hearings. The scoping memo directed that parties meet and confer regarding issues that may require evidentiary hearings and pending discovery matters, and report the results of the meet-and-confer process to the Administrative Law Judge (ALJ).

A meet-and-confer session was held on March 21, 2006, with a follow-up conference call on March 29, 2006. All parties to I.03-02-033 and I.02-11-040 received notice of the meet-and-confer session. Representatives of Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Sempra Energy (Sempra), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) participated. On March 31, 2006, parties reported the outcome of the meet and confer in two letters to the ALJ, one sent by SoCalGas and SDG&E and another by SCE.¹ According to SoCalGas and SDG&E, PG&E indicated that it likely would not submit testimony or participate actively in this portion of the proceedings. As provided in the scoping memo, the ALJ held a scheduling conference call on April 5, 2006, during which, among other matters, the meet-and-confer results were discussed.

In their letter to the ALJ, SoCalGas and SDG&E submitted a list of 45 potential issues, organized according to the scoping memo issue to which each

¹ The letters were served to all parties and have been placed in the correspondence files in the proceedings.

pertains. SoCalGas and SDG&E indicate that they do not dispute most of the GDS and NorthStar audit recommendations and that, for the recommendations they characterize as “disputed,” they might dispute the entire recommendation, dispute a portion thereof, or agree with the recommendation but wish to make a certain clarification. They propose to prepare an exhibit describing the issues they do not dispute and to submit testimony regarding the disputed issues.

In its letter, SCE states that it believes that two scoping memo issues and one additional issue discussed in the GDS audit should be addressed in testimony and at evidentiary hearing. SCE attached a copy of those issues and 13 related sub-issues. SCE takes no position regarding the other scoping memo issues and related audit issues identified by SoCalGas and SDG&E, and does not intend to address them in testimony.

SoCalGas and SDG&E propose that, for purposes of testimony and hearing, the 12 issues identified in the scoping memo be replaced with 20 issues from their list of 45 issues, excluding those issues which they do not dispute and SCE does not plan to address.

SCE believes that the list proposed by SDG&E and SoCalGas narrows the issues inappropriately from the broader issues identified in the scoping memo. SoCalGas and SDG&E assert that the items on SCE’s list that are not on their own list are outside the scope established by the scoping memo. SoCalGas/SDG&E and SCE also disagree regarding the appropriate wording of some of the issues that they propose to address in testimony.

III. Scope of Testimony and Evidentiary Hearings

The scoping memo limited the issues to be considered at this time to those that are addressed in the GDS and NorthStar audits and/or in the testimony submitted in Phase I.B of I.02-11-40 that addresses related topics. It provided

that, if additional issues are raised in the 2005 affiliate compliance audit by Alliance to be filed on May 1, 2006, they may also be addressed.

The scope of testimony and evidentiary hearings should be limited further, since SoCalGas and SDG&E do not dispute many of the audit recommendations. The proposed lists of issues submitted by SoCalGas/SDG&E and SCE are modified in several respects, to ensure an adequate record regarding each of the issues identified in the scoping memo. Absent modification by further ruling, the scope of testimony and evidentiary hearings will be limited to the following issues:²

Scoping Memo Issue 1. Identification of covered affiliates and energy marketing affiliates for purposes of the affiliate transaction rules (Rules I.A, II.B and VI.B)³; whether the Commission rather than the utilities should make initial determinations regarding covered affiliates.

1. Have SoCalGas and SDG&E classified Sempra and their affiliates properly regarding whether they are covered by the affiliate transaction rules?
2. Have SoCalGas and SDG&E identified their energy marketing affiliates properly for purposes of Rule V.G.2.e?
3. Have SoCalGas and SDG&E complied with Rules II.B and VI.B regarding the creation of new affiliates?

² The related scoping memo issues are reiterated here for clarity. However, testimony should be limited to the sequentially-numbered issues identified in this ruling.

³ The scoping memo issues reference relevant affiliate transaction rules or Remedial Measures identified in the GDS and NorthStar audits and/or in SCE testimony submitted in Phase I.A of I.02-11-040. Parties may address compliance with all relevant affiliate transaction rules, Remedial Measures, or other requirements, whether or not explicitly identified in the scoping memo issues or this ruling.

4. Should the Commission rather than SoCalGas and SDG&E make initial determinations regarding which affiliates are covered by the affiliate transaction rules and which are energy marketing affiliates?
5. Should the Commission require SoCalGas and SDG&E to file at least annually a list of all affiliates along with adequate support and reasoning why each affiliate is covered or not covered by the affiliate transaction rules?

Scoping Memo Issue 2. *SoCalGas and SDG&E interconnect procurement activities with their liquefied natural gas (LNG) affiliates (Rules III.B.1, IV.B, and VII.I).*

6. Have SDG&E and SoCalGas violated the affiliate transaction requirements and/or their own Affiliate Compliance Guidelines either in connection with the posting of information provided to their LNG affiliates or with respect to any preferential treatment of such affiliates?
7. Have SoCalGas and SDG&E provided their LNG affiliates, either directly or through their holding company or another affiliate, non-customer specific non-public information? If so, was this in violation of the affiliate transaction requirements?
8. Should SoCalGas and SDG&E be required to post any nontariffed or tariffed services and related information that they provide their LNG affiliates? If so, should they be required to develop and maintain written policies and procedures for implementing this process?
9. Have SoCalGas and SDG&E, in interactions with their LNG affiliates, conducted themselves in the same manner as when dealing with unaffiliated third parties? Is it appropriate for SoCalGas and SDG&E to treat their LNG affiliates the same as unaffiliated third parties?

Scoping Issue 5. *Transfer of non-customer specific non-public information and use of that information (Rules IV.B and V.E and Remedial Measures 6, 7, 12, 14, and 15); whether energy risk management should be prohibited as a shared service; whether SoCalGas and SDG&E should not be allowed to obtain energy market-related professional services from affiliates; whether there was inappropriate information sharing and/or decision making coordinated between SoCalGas and*

SDG&E; use of third-party telephone brokers by SoCalGas and SDG&E energy procurement groups.

10. Have SoCalGas and SDG&E violated the affiliate transaction requirements in connection with the use of telephone brokers? Should SoCalGas and SDG&E be prohibited from using third-party telephone brokers in connection with energy procurement transactions?
11. Have the Sempra companies violated the affiliate transaction requirements in the provision of risk management?
12. Has Sempra Energy Risk Management provided non-customer specific non-public information of SoCalGas and/or SDG&E to any affiliates or allowed affiliates to obtain such information through other means? If so, were these transfers in violation of the affiliate transaction requirements?
13. Has Sempra Energy Risk Management acted as a conduit between SoCalGas and its affiliates regarding financial positions in futures markets and SoCalGas Gas Acquisitions' gas purchasing plans or strategies? If so, were such transfers in violation of merger Remedial Measure 15?
14. Should Sempra be prohibited from providing risk management as a shared corporate service to SDG&E and SoCalGas?
15. Has SDG&E provided non-customer specific non-public information to SoCalGas regarding the status of nuclear plants in the region as well as information regarding electric generation plant outages? If so, was this in violation of the affiliate transaction requirements?
16. Have activities of the Sempra Commodity Team violated affiliate transaction requirements?
17. Were any other activities described in Chapter 4 of SCE's testimony submitted in Phase I.B of I.02-11-040 improper?

Scoping Memo Issue 8. *Shared employees (Rules V.G.1 and V.G.2.e); whether temporary work assignments should be reported based on the ultimate beneficiary of the work; whether SDG&E should suspend and prohibit joint temporary employee assignments with its affiliates.*

18. Has SDG&E violated the affiliate transaction rules regarding temporary or intermittent employee assignments? Should SDG&E be required to suspend and prohibit joint temporary employee assignments with its affiliates?
19. Should SoCalGas' and SDG&E's compliance with Rule V.G.2.e be assessed based on the ultimate beneficiary of temporary or intermittent work assignments?

Scoping Memo Issue 9. *Whether SoCalGas and SDG&E should be required to develop written policies and procedures for each functional work group affected by the affiliate transaction rules.*

20. Should SoCalGas and SDG&E be required to develop and maintain written policies and procedures for each functional work group affected by the affiliate transaction requirements?
21. Should SoCalGas and SDG&E be required to develop and maintain written separation policies and procedures?

Scoping Memo Issue 10. *Whether the Affiliate Compliance Departments of SoCalGas and SDG&E should be given more prominence, with an increase in their level of resources and positioning in the organizations.*

22. Should SoCalGas and SDG&E be required to give their Affiliate Compliance Departments more prominence and increase their level of resources and positioning within the organization?

Scoping Memo Issue 11. *Whether future annual compliance audits should be performed under the direction of Commission staff, rather than SoCalGas and SDG&E (Rule VI.C); whether SoCalGas and SDG&E should be required to develop written policies and procedures that address how outcomes and recommendations of each annual compliance audit will be reviewed.*

23. Should future annual compliance audits be performed under the direction of Commission staff, rather than SoCalGas and SDG&E?

Scoping Memo Issue 12. *Nontariffed products and services (Rules VII.D, VII.F, VII.H, and VII.I); data accessibility, business controls, accounting, auditing, and reporting practices; pricing relative to cost.*

- 24. Has SDG&E implemented policies and procedures to provide timely and correct revenue information to the Commission for nontariffed products and services?
- 24. Have SoCalGas and SDG&E complied with Rule VII.F regarding advice letter filing requirements for existing products and services?
- 26. Has SDG&E provided nontariffed products or services at cost greater than revenue? If so, is this contrary to any Commission requirements or policies?

For each identified issue, parties may address compliance with existing rules, requirements, and statutes; whether the companies' activities have been counter to the interests of California gas and electricity ratepayers, have benefited unregulated affiliates or impeded competition, or otherwise reflect conflicts between the interests of Sempra and the interests of the regulated utilities and their ratepayers; and whether additional rules, conditions, or other remedies should be implemented.

In addressing Issues 1, 2, and 3, SoCalGas and SDG&E should include in their testimony a list of all of their affiliates. For the holding company and each affiliate, SoCalGas and SDG&E should describe the company's purpose and activities, and should provide and justify their position regarding whether the company is covered by the affiliate transaction rules and whether it is an energy marketing affiliate.

SoCalGas and SDG&E should include their Affiliate Compliance Guidelines as part of their testimony regarding Issue 6.

Regarding Issue 26, SDG&E should submit testimony identifying each category of nontariffed products or services it has provided with a cost greater than its revenue during or subsequent to 2003, including the category identified by GDS on page 89 of its audit report. SDG&E should provide a description of each such category, the types and quantities of products and services contained

within the category, the total and marginal costs allocated to the category, revenues derived from the category, and typical purchasers of the products and services.

Several issues recommended by SCE are excluded from consideration at this time. While GDS identified the potential benefit to LNG affiliates of SoCalGas and SDG&E system integration efforts and system infrastructure upgrades as an area of potential concern, it did not review the utilities' activities in this regard. The GDS and NorthStar audits did not address corporate coordination of strategic decisions regarding LNG supply, or of the pricing or provision of natural gas storage services. While GDS identified that SoCalGas modified its storage agreement with Sempra Energy Solutions during 2003, GDS found that the contract amendments were posted according to the affiliate transaction rules and did not raise other concerns regarding the amendments. Thus, concerns have not been documented that would warrant consideration of these issues at this time. The Commission may consider these issues at a later time, in these or other appropriate proceedings.

SoCalGas and SDG&E have indicated that they either have implemented each undisputed audit recommendation from GDS and NorthStar, or are in the process of doing so. For completeness of the record, SoCalGas and SDG&E should describe the status of implementation of each undisputed audit recommendation. SoCalGas and SDG&E should prepare a proposed exhibit that lists and describes the status of implementation of each undisputed audit recommendation not addressed elsewhere in testimony. They should serve the proposed exhibit on all parties along with their responsive testimony due June 13, 2006. If any party has concerns about possible receipt of the proposed exhibit without a sponsoring SoCalGas or SDG&E witness, it should notify me

by letter or email, with service on all parties in I.03-02-033, no later than June 27, 2006. The party should specify which portions of the proposed exhibit raise evidentiary concerns, and why. Based on any such notifications and my own review of the proposed exhibit, I will notify SoCalGas and SDG&E if they should provide sponsoring witnesses for the proposed exhibit and/or additional information regarding implementation of the undisputed audit recommendations.

III. Scheduling Conference Calls

During the scheduling conference call on April 5, 2006, I directed SoCalGas and SDG&E to provide electronic service of the 2005 affiliate compliance audit report by Alliance, which is to be filed in I.03-02-033 on May 1, 2006. Another conference call will be held on May 5, 2006 at 2:00 p.m. to discuss scheduling and other procedural matters. In particular, we will address whether additional issues that may be raised in the Alliance audit report should be addressed at this time. Parties may participate by calling 203-310-3007; the participant pass code is 771069.

Therefore, **IT IS RULED** that:

1. The scope of testimony and evidentiary hearings to be held on a consolidated basis in Investigation (I.) 02-11-040 and I.03-02-033 is as set forth herein.
2. Southern California Gas Company and San Diego Gas & Electric Company shall provide electronic service of the 2005 audit report of Alliance Consulting Group, which is to be filed in I.03-02-033 on May 1, 2006.
3. A scheduling conference call shall be held on May 5, 2006, as set forth herein.

Dated April 24, 2006, at San Francisco, California.

/s/ CHARLOTTE F. TERKEURST

Charlotte F. TerKeurst
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Testimony Requirements on all parties of record in this proceeding or their attorneys of record.

Dated April 24, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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